

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-435872-D7 AND ALL
OTHER SEAMAN'S DOCUMENTS

Issued to: Forest A. WALLIS, Jr.

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1585

Forest A. WALLIS, Jr.

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 14 April 1966, an Examiner of the United States Coast Guard at Tampa, Florida, suspended Appellant's seaman's documents for 4 months outright plus 4 months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a fireman-watertender on board the United States SS ADABELLE LYKES under authority of the document above described, on or about 17 March 1966, Appellant wrongfully failed to perform his duties on the 2000-2400 watch in a foreign port.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of guilty to the charge and specification. However, he disclosed to the Examiner that he was on probation at the time of the offense. When the Examiner warned him that any suspension previously ordered on probationary terms would have to be invoked if he were found guilty, Appellant elected to change his plea to "not guilty".

The Investigating Officer introduced in evidence extracts from the articles and official log book of ADABELLE LYKES.

In defense, Appellant offered in evidence his own testimony and that of his mother.

At the end of the hearing, the Examiner rendered an oral decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of 4 months outright plus 4 months on 18 months' probation.

The entire written decision was served on 15 April 1966. Appeal was timely filed on 19 April 1966.

FINDINGS OF FACT

On 17 March 1966, Appellant was serving as a fireman-watertender on board the United

States SS ADABELLE LYKES

and acting under authority of his document while the ship was in the port of Saigon, Vietnam.

The vessel had arrived at Saigon at 1430 on that date. Appellant, who was a crew delegate, immediately went ashore without consulting anyone aboard the vessel. Ashore he asked a stevedore foreman and a gate guard how long the ship would be in port. Relying upon the advice given he assumed that sea watches would be broken. He therefore did not return to the vessel until 0800 the next day, to learn that sea watches had not been broken and that he had failed to stand his 2000-2400 watch on 17 March.

Appellant has been going to sea for more than twenty one years. His significant prior record is as follows:

- (1) 14 May 1963, Long Beach, California: suspended three months on six months' probation for assault and battery aboard USNS SAN RAFAEL and failure to join SS EXCELLER;
- (2) 7 August 1965, Philadelphia, Pennsylvania: suspended three months on eighteen months' probation for failure to join SS HEREDIA and for failure to perform duties aboard and failure to join SS YAQUE.

Appellant was thus in fact on probation at the time of the instant offense.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the suspension ordered is too harsh.

Appellant reargues, as he did before the Examiner, his cases on the four charges previously found proved.

He points also to his distressed domestic circumstances as grounds for leniency. It appears that appellant's father had recently died, leaving him as the sole support of his mother, apart from Social Security payments. Appellant's child, a victim of cerebral palsy, cannot be tended by his mother alone and must be cared for in a nursing home.

APPEARANCE: Appellant, pro se.

OPINION

All of the material presented to me on appeal was placed before the Examiner at the time of hearing.

As the Examiner then said, the earlier charges cannot be relitigated and the suspension ordered at Philadelphia on probation had to be invoked by him. The Examiner also saw fit to add an additional month's suspension for the instant offense.

The practice of adding additional outright suspension to one invoked from an earlier probationary order is entirely appropriate.

The only question then is whether Appellant has presented such unusual grounds for clemency that otherwise appropriate orders should be set aside on review. From the very fact that the Examiner ordered the additional month I discern that he saw no such compelling reasons.

On review I agree with him. There is no doubt that Appellant presents a picture of misfortune.

But in three years he has compiled a record of misconduct involving service aboard five different ships. At the first hearing he was dealt with extremely leniently considering the offenses. At the second hearing he was dealt with even more leniently considering his recent prior record. leniency is obviously not the answer for appellant.

As a seaman of his long experience he is chargeable with knowledge that reliance cannot be placed upon speculations of persons not connected with the ship as to its movements. He admitted at the hearing that he had done wrong and pointed out that as a delegate he had extra responsibility to ascertain the facts.

On 17 March 1966, no one was better aware than Appellant of his duties to ADABELLE LYKES. No one was better aware than he of his probationary status. No one was better aware than he of his domestic difficulties. If he is so heedless of his own plight he cannot complain that an examiner enters an appropriate order at hearing nor can he expect me to disturb an order on appeal.

While it is not a matter of "appeal", I cannot but note with approval that the Examiner here entered his decision and order on the record in the presence of Appellant and effectively made the order operative without delay.

CONCLUSION

I conclude that the Examiner's order in this case is appropriate and should not be disturbed.

ORDER

The order of the Examiner dated at Tampa, Florida, on 14 April 1966, is AFFIRMED.

P. E. TRIMBLE
Vice Admiral, United States Coast Guard

Acting Commandant

Signed at Washington, D. C. this 13th day of September 1966.

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